IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6744 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDRABHAI POONAMBHAI SODHA PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6744 of 2003

MR PRADEEP PATEL for Petitioner No. 1

MS PANCHAL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 18/06/2003

ORAL JUDGEMENT

The present petition is filed challenging the action of the respondents No.1 and 2, restraining/preventing the petitioner from appearing in

the first year PTC examination, scheduled to start from 19-5-2003.

2) The petitioner has filed the present petition during the vacation and this Court has passed an order on 16-5-2003 admitting the said petition and permitting the petitioner to appear at the examination starting from 19-5-2003.

3) It is the case of the petitioner that the petitioner is a student belonging to socially and economically backward class (Baxi Panch). The petitioner has passed standard-X in the year 1997, securing 64.71% marks. The petitioner, thereafter, passed his standard XI examination after having opted to go in the science stream. The petitioner cannot appear in the standard XII examination of the Science stream held in March, 1999. The petitioner, therefore, applied to the concerned school as per the prevalent position to change the stream and petitioner was permitted to shift to the general stream. The petitioner, thereafter, appeared in standard XII examination in the general stream in the year 2000 and secured 77.83% marks.

4) It is further stated that the Director of Primary Education, Gujarat State, issued an advertisement on 12-6-2002 for admission to training course in PTC. Pursuant to the petitioners' application, the competent authority issued a call letter to the petitioner to appear with all the relevant mark sheets on 27-8-2002. It is further stated that when the petitioner appeared before the competent authority pursuant to the call letter dated 17-8-2002, the petitioner was told that due to change of stream and consequent drop for a period of one year after passing standard XI examination, five marks were required to be deducted from total marks obtained by the petitioner. The petitioner was further told that merit for the purpose of selection of general stream of Baxi Panch students had gone upto 77.17% marks and hence, the petitioner, who has secured 77% marks is not entitled to get admission in the course.

5) It is further stated that the petitioner had made an oral as well as written representation but the petitioner could not get any favourable reply from the competent authority and hence, the petitioner filed a petition before this Court being Special Civil Application No.11570/2002. The said petition was allowed by this Court on 11-12-2002. This Court (Coram:M.S.Shah, J.) held that the petitioners' nonappearance in H.S.C. examination in March 1999 cannot be held out against the

petitioner nor can the petitioner be treated as having passed H.S.C. examination at the second attempt. The respondents in that matter were directed to consider the petitioners' case for admission to the PTC course on the basis that the petitioner has obtained 467 marks out of 700 marks, i.e. 77.83% marks at the H.S.C.examination (General Stream) held in March 2000.

6) The petitioner, therefore, was admitted to the PTC class and he continuously and regularly attended the classes and prosecuted the studies. On completion of one year and at the fag end of start of annual examination of first year course in PTC, the petitioner was served with a notice dated 10-5-2003, restraining/refusing the petitioner from appearing at the annual examination due to 55 days' deficit in total attendance required in the class room to be eligible for examination.

7) It is on the above facts, present petition is filed before this Court challenging the communication dated 10-5-2003.

8) Heard Mr.Pradeep Patel, the learned advocate appearing for the petitioner. He has submitted that from the judgement and order passed by this Court, it is clear that the petitioner was entitled to be given admission immediately on 27-8-2002, looking to the merits of marks received by him and action of the competent authority of deducting five marks from the total of marks obtained by the petitioner on taking drop of one year after changing the stream and denying the admission to the petitioner, at the relevant time, was fully unjustified and uncalled for. He has further submitted that if for any reason, the student had not appeared at the qualifying examination, such nonappearance was not required to be considered as an attempt or trial entailing deduction of five marks for each trial. Mr.Patel has further relied on the provisions made in Government Resolution dated 31-3-1990 issued by the State Government and submitted that action of denying admission to the petitioner at the earliest opportunity, preventing him to attend the classes to secure required attendance and later on, precluding him to appear in the annual examination on the ground of deficit in the attendance, is absolutely unjust, improper and irrational. He has further submitted that the petitioner was qualified and entitled to be given admission on the very day, when he was called for interview and hence any delay in giving him admission cannot be clamped on the petitioner, which is the reason for deficit in attendance and consequent action of restraining him from appearing in the examination.

9) On the other hand Ms.Panchal, the learned Assistant Government Pleader appearing for the respondents submitted that because of the deficit of 55 days, the petitioner was not allowed to appear in the examination. She further relied on Rule 4 of Norms and Standards for Elementary Teachers Education Programme issued by National Council for Teachers Education. It says that there shall be at least 150 teaching days in a year exclusive of period of admission, examination etc. Besides, every teacher trainee shall be required to undergo internship in teaching (including practice teaching/skill development) at least for 30 days in nearby elementary schools.

10) Considering this Rule, the respondent has issued the letter dated 10-5-2003 stating that there was deficit of 55 days and the same was not condoned and because of that the petitioner was not permitted to appear in the examination. However, pursuant to the order passed by this Court, the petitioner was allowed to appear in the examination. However, because of the pendency of the present petition, the result of the First year PTC examination of the petitioner may not be declared. On that apprehension, it is urged before the Court that the petition should be finally diposed of by giving appropriate directions in this regard.

11) After having heard the learned advocate appearing for the petitioner and learned AGP and after having gone through the averments made in the petition, and findings arrived at in the earlier judgement passed by this Court in Special Civil Application No.11507/2002 on 11-12-2002, I am of the view that delay of 55 days cannot be attributed to the petitioner. The petitioner is entitled to admission pursuant to the call letter dated 27-8-2002. However, because of the particular stand taken by the respondent, the petitioner was not given admission and because of that the petitioner had to approach this Court earlier. It is only because of the order passed by this Court on 11-12-2002, holding that the petitioners' nonappearance at the H.S.C.examination in March 1999 cannot be held against the petitioner nor can the petitioner be treated as having passed H.S.C. examination at the second attempt, the petitioner was given admission and considering all these facts, this Court has also by way of interim order permitted the petitioner to appear in the examination. In light of these peculiar facts and circumstances of the case, this Court is of the view that the petition is required to be allowed and accordingly the same is allowed.

12) Before parting with the matter, the view which is taken by this Court is further supported by the judgement of the Honourable Supreme Court reported in AIR 1999 SUPREME COURT 911 in the case of Harsh Pratap Sisodia V. Union of India , which is binding on this Court, in para 7 of the same it is held as under :

> "Since, the petitioner was kept out of the College, on wholly unjustified and illegal grounds, it is obvious that he would not be able to make up the attendance criteria, if the attendance is to be counted from the date when the session started. It, therefore, appears appropriate to us to direct that the attendance in the case of the petitioner, should be counted from the date when the admission is granted to him pursuant to the directions hereinabove made, by the Medical College, Solapur to consider his eligibility for appearing in the examination."

13) The respondents are, therefore, directed to consider the attendance of the petitioner from the date of joining the college pursuant to the order passed by this Court in Special Civil Application NO.11507/2002 and declare the result of the examination of First Year PTC course held on 19-5-2003.

14) Having regard to the peculiar facts and circumstances of the case and considering the aforesaid judgement of Honourable Supreme Court this petition deserves to be allowed and it is allowed accordingly. Rule is made absolute with no order as to costs.

15) This Court has taken the above view because of the peculiar facts and circumstances of this case and the same should not be treated as a precedent.

(K.A.Puj, J.)
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